

Section-By-Section Description of the Staff Discussion Draft

Section 1 will establish the short title and includes the table of contents.

Section 2 includes the draft's definitions.

Definition Highlights:

A "broadband Internet transmission service" (BITS) is defined as a packet-switched service (regardless of the facilities used to provide the service) that is transmitted in Internet Protocol (IP) or another packet-based protocol and provides to subscribers the capability to send and receive packetized information. The service includes features, functions, capabilities, packetized facilities, network equipment, and electronics used to transmit packetized information. The service does not include any circuit-switching related features, functions, and capabilities, the provision of a video programming package, or customer equipment.

A "broadband video service" is defined as a two-way, interactive service (regardless of the facilities used) that integrates (1) on a real-time and customizable basis, a video programming package with voice and data features, functions and capabilities and (2) the capability to access Internet content of the subscriber's choosing consistent with Section 104.

A "broadband video service provider" is defined as an entity that provides a broadband video service that is delivered directly to subscribers over facilities owned or controlled by the provider.

A "VOIP service" is defined as a packet-switched voice communications service (regardless of the facilities used) that enables subscribers to send or receive voice communications in IP or a successor protocol over BITS to or from any subscriber with a telephone number under the North American Numbering Plan.

Title I – BITS

Section 101 establishes the regulatory jurisdiction for BITS. The provision preempts the FCC and any State or local government from regulating the rates, charges, terms, or conditions for BITS or a BITS provider, except as expressly provided in the draft bill.

Section 101 also establishes that BITS are interstate services subject to exclusive federal jurisdiction, except as expressly provided in the bill. However, the draft bill preserves State and local authority to manage public rights-of-way in a non-discriminatory manner. In addition, the FCC retains its authority over the licensing of spectrum.

Section 102 provides that any BITS provider must file a registration statement with the FCC (and a copy with the State in which it will provide service) in accordance with FCC regulations before offering BITS. However, the provider is granted a grace period while its registration statement is reviewed by the FCC if the provider is already providing BITS by the date of enactment. The FCC may disapprove a registration statement: (1) for a failure to comply with the FCC's registration regulations or (2) if a BITS provider has violated FCC rules, Federal or State law, or has a notice of apparent liability pending at the FCC and the FCC determines that the BITS provider's offering of the service would harm consumers.

Section 103 provides BITS providers with the right and duty to interconnect and exchange traffic with other requesting BITS providers and telecommunications carriers.

Section 104 requires BITS providers: (1) to provide subscribers with access to lawful content, applications, and services provided over the Internet, and not to block, impair, or interfere with the offering of, access to, or the use of such content, applications, or services; (2) to permit subscribers to connect and use devices of their choosing in connection with BITS; and (3) not to install network features, functions, or capabilities that do not comply with guidelines established in the draft bill. However, these requirements do not preclude a BITS provider from: (1) offering service plans that involve reasonable bandwidth or network capacity limitations, or value-added consumer-protection services such as parental controls and spam filters; (2) taking reasonable measures to protect the security and integrity of its network and services as well as preventing unlawful conduct; and (3) carrying or offering broadband video services or other premium services that require managing the capabilities of a BITS provider's network to provide enhanced quality of service, except that the carrying or offering of such services may not block, or unreasonably impair or interfere with access to lawful content, applications, and services provided over the Internet and may not unreasonably restrict the right of subscribers to connect and use devices with their BITS.

Section 105 provides that a company that is both a telecommunications carrier and a BITS provider retains its rights to access unbundled network elements and collocation afforded under the Communications Act. Section 105 also provides that such an entity also maintains its rights to special access tariffs.

Section 106 provides that the FCC shall establish procedures for FCC oversight of BITS network planning and the interconnectivity of devices with such networks. Section 106 also permits the FCC to participate in the development, by appropriate industry standards-setting organizations, of BITS network interconnectivity standards that promote interconnection with BITS networks and network capabilities as well as services by individuals with disabilities.

Title II – VOIP Services

Section 201 establishes the regulatory jurisdiction for VOIP services. The provision preempts the FCC and any State or local government from regulating the rates,

charges, terms, or conditions for VOIP services or a VOIP service provider, except as expressly provided in the draft bill.

Section 201 also establishes that VOIP services are interstate services subject to exclusive federal jurisdiction, except as expressly provided in the draft bill.

Section 202 provides that any VOIP provider must file a registration statement with the FCC (and a copy with the State) in accordance with FCC regulations before offering VOIP services. However, the provider is granted a grace period while its registration statement is reviewed by the FCC if the provider is already providing VOIP service by the date of enactment. The FCC may disapprove a registration statement: (1) for a failure to comply with the FCC's registration regulations, or (2) if a VOIP service provider has violated FCC rules, Federal or State law, or has a notice of apparent liability pending at the FCC and the FCC determines that the VOIP service provider's offering of the service would harm consumers.

Section 203 provides that VOIP service providers have the right and duty to exchange voice communications traffic with other VOIP providers and telecommunications carriers. Section 203 provides that a VOIP service provider and a telecommunications carrier shall enter into a reciprocal compensation agreement for the exchange of traffic. The FCC shall create a unified compensation regime to determine the reasonable rate for such compensation, which may include bill and keep.

Section 204 provides that a VOIP service provider and a telecommunications carrier must negotiate in good faith for the purpose of entering into an agreement with respect to the exchange of voice communications traffic. Either party can enlist the FCC's assistance in mediating any disputes, as well as the assistance of a State PUC if the exchange of traffic will occur exclusively in one State. If a disagreement persists, either party can request arbitration by the FCC (or a State PUC involving disputes within a single State).

Section 205 requires VOIP providers to provide 911 and E911 services to their customers. Entities that own or control necessary E911 infrastructure must make such infrastructure available to VOIP providers so that VOIP providers can offer 911 and E911 services. Any VOIP provider that cannot provide 911 and E911 services for technological reasons (as determined by the FCC) must provide notice to subscribers of their inability to provide 911 and E911 services.

Section 206 provides that the FCC must impose universal service contribution requirements on VOIP providers if the FCC determines that such a requirement is necessary to ensure that contributions to the universal service fund are being made in an equitable and non-discriminatory manner.

Section 207 provides that VOIP subscribers be permitted to port their telephone number to and from VOIP services.

Section 208 requires VOIP service providers to provide relay services to their subscribers who have hearing or speech disabilities and ensures that States have continued authority to oversee and regulate state-operated relay programs, regardless of the method of relay transmission.

Title III – Broadband Video Services

Section 301 establishes the regulatory jurisdiction for broadband video services. The provision preempts the FCC and any State or local government from regulating the rates, charges, terms, or conditions for broadband video services or a broadband video service provider, except as expressly provided in the draft bill.

Section 301 also establishes that broadband video services are interstate services subject to exclusive federal jurisdiction, except as expressly provided in the draft bill.

Section 302 provides that any broadband video service provider must file a registration statement with the FCC (and a copy with the State and the local franchising authority) in accordance with FCC regulations before offering broadband video services. However, the provider is granted a grace period while its registration statement is reviewed by the FCC if the provider is already providing broadband video service by the date of enactment. The FCC may disapprove a registration statement: (1) for a failure to comply with the FCC's registration regulations or (2) if a broadband video service provider has violated FCC rules, Federal or State law, or has a notice of apparent liability pending at the FCC and the FCC determines that the broadband video service provider's offering of the service would harm consumers.

Section 303(a) establishes a streamlined local franchise process for broadband video services. The franchise shall commence 15 days after a local franchise authority's receipt of: (1) any franchise bond payments required by the local franchise authority under Section 303(d); (2) a statement by the provider that it will agree to any public, educational, and governmental use of the provider's system as required by the local franchise authority under Section 304(b); and (3) designation by the provider of a local agent. The FCC shall set a uniform duration for franchises, and establish procedures for their renewal, termination and transfer.

Section 303(b) allows a local franchise authority to assess a franchise fee not to exceed 5 percent of a broadband video service provider's gross revenues.

Section 303(c) requires a broadband video service provider to use public rights-of-way and easements in a manner that ensures the public safety and the safety, functioning and appearance of property; that places the cost of installation and construction on the provider or its subscribers; and that compensates property owners for any damages. Section 303(c) also preserves local franchise authority to manage the time, place, and manner of construction by a broadband video service provider in public rights-of-way and easements.

Section 303(d) allows a local franchise authority to require a broadband video service provider to obtain bonds, security funds, letters of credit, insurance, or indemnification, or to pay penalties or liquidated damages, to ensure compliance with the broadband video service provisions of the draft bill.

Section 304(a) requires the FCC to apply comparable regulations on broadband video service providers as apply to cable operators under the Communications Act of 1934 regarding: television program ratings; equal access for political candidates; program sponsorship; retransmission consent, carriage of significantly viewed signals, network non-duplication, syndicated exclusivity, and sports blackouts; ownership limits; must carry; content of the basic tier; blocking and scrambling of channels; emergency alerts; inside wiring; compatibility of equipment and commercial availability of navigation devices; equal employment opportunity; and closed captioning.

Section 304(b) allows a local franchise authority to impose comparable capacity requirements on broadband video service providers as apply to cable operators regarding public, educational, or governmental channels. Section 304(b) also states that local franchise authorities may not require broadband video service providers to construct an institutional network, but can require the continued operation of an existing cable institutional network.

Section 304(c) requires the FCC to ensure that a broadband video service provider does not deny access to its service to residential subscribers based on the income of those subscribers.

Section 304(e) applies to broadband video service providers comparable rights and requirements as cable operators regarding program access.

Section 304(f) requires the FCC to promulgate regulations prohibiting a broadband video service provider from omitting television broadcast stations or unaffiliated video programming services carried on the system from any navigational device, guide, or menu.

Section 305 requires the FCC to promulgate regulations preventing a broadband video service provider from requiring a financial interest in a program service as a condition of carriage, coercing a video programming vendor to provide exclusive rights to programming, or unreasonably restraining the ability of an unaffiliated video programming vendor to compete by discriminating in the provision of distribution.

Title IV – General Provisions (Applicable to BITS, VOIP, and Broadband Video Service)

Section 401 requires the FCC to issue all regulations to implement this draft bill within 180 days, unless otherwise provided, and to make registration statements publicly available.

Section 402 provides that the FCC shall establish national consumer protection standards (including consumer disclosures, billing accuracy, service termination procedures, and unfair and deceptive practices) for BITS, VOIP services, and broadband video services. State PUCs are authorized to enforce the rules promulgated by the FCC.

Section 403 provides privacy protection to subscribers of BITS, VOIP, and broadband video services. Section 403 requires service providers to provide a separate notice to consumers regarding the nature, frequency, use, and access to consumer information. Express consent is required to collect personally identifiable information with limited exceptions. Express consent is also required to disclose any personally identifiable information with limited exceptions for billing, court order, or with consumer consent. Consumers must be provided access at reasonable times to all personally identifiable information and are afforded those rights and remedies contained in section 631. Service providers are obligated to destroy all personally identifiable information that is no longer necessary for the purpose for which it was collected.

Under subsection (g) of Section 403, service providers are required to protect the confidentiality of proprietary network information of telecommunications carriers, equipment manufacturers, and customers, including resellers of telecommunications services, and mandates that such information may only be used to provide the service for which it was collected, or services relating to the provision of service, with certain exceptions. Service providers must disclose such proprietary network information upon express customer request. Aggregated information may be used and disclosed, but shall be available to others upon nondiscriminatory terms. A VOIP service provider that publishes a directory is required to share such information on a nondiscriminatory basis, and must share listed and unlisted information for emergency services on a nondiscriminatory basis to providers of emergency services. Express customer approval is required to use or disclose call location information for portable VOIP service.

Section 404 provides that BITS, VOIP, and broadband video service providers must ensure that their equipment and services are accessible to individuals with disabilities, and compatible with specialized equipment already in use by individuals with disabilities, unless doing so would constitute an undue burden. In addition, this section prohibits BITS, VOIP, and broadband video service providers from stripping out any closed captioning, or video descriptions that may be included in a video transmission.

Section 405 prevents cross-ownership between telephone companies who provide BITS or broadband video service and cable companies who provide BITS or broadband video service, in the same local market.

Section 406 provides that the FCC can ensure the reliability and integrity of BITS, VOIP services, and broadband video services.

Section 407 provides non-discriminatory access to poles, ducts, conduits, and rights-of-way to BITS and broadband video service providers as well as requiring such

entities to provide non-discriminatory access to their poles, ducts, conduits, and rights-of-way.

Section 408 permits the FCC to investigate and resolve disputes with respect to delays in standards-setting approval.

Section 409 prohibits State laws that prevent governmental entities from providing BITS, VOIP services, or broadband video services. However, Section 409 prohibits governmental entities that provide such services from receiving preferential treatment from the government that owns or controls such entities as compared to other providers of such services. Section 409 also requires governmental entities providing such services to comply with all laws and regulations that apply to providers of BITS, VOIP services, and broadband video services.

Section 410 clarifies that nothing in the draft bill preempts the enforcement of State laws of general applicability. Section 410 also preserves the FCC's authority over emergency communications systems, capabilities, and requirements.

Section 411 provides for a process through which parties may complain to the FCC regarding an act or omission in violation of the draft bill.

Section 412 provides the FCC with the authority to obtain documents necessary to carrying out its responsibilities under the draft bill.

Section 413 permits the FCC to revoke an entity's authority to provide BITS, VOIP services, or broadband video services for false statements or willful or repeated violations of the draft bill.

Section 414 provides that any violation of this draft bill will be treated as a violation of the Communications Act of 1934.